(255)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri H.L. Dattu, C.J.

Writ Petition No.1303 of 1990

Petitioner Chandra Sekhar Pandey, S/o Shiv Bahadur Pandey, Ex-Officer, Allahabad Bank, Durg, by his legal representatives :

1. Smt. Chandrakali Pandey, widow of Late Chandra Sekhar Pandey, aged about 62 years
2. Pradeep Kumar Pandey, son of Late Chandra Sekhar Pandey, aged about 36 years
3. Sandeep Kumar Pandey, son of Late Chandra Sekhar Pandey, aged about 34 years
4. Shravan Kumar Pandey, son of Late Chandra Sekhar Pandey, aged about 33 years

versus

Respondent Allahabad Bank, through its Chairman & Managing Director, 2, Netaji Subhash Road, Calcutta.

Present : Shri B.P.Sharma, counsel for the petitioner.
Shri P.S.Koshy, counsel for the respondent.

ORAL ORDER

(Passed on 23rd March, 2007)

An officer of Allahabad Bank was before this Court, *inter alia*, questioning the correctness or otherwise of the orders passed by the appellate authority and the orders passed by the disciplinary authority of the Bank. During the pendency of this writ petition, the petitioner has expired. With the permission of this Court, the legal representatives of the petitioner have come on record and they are prosecuting this writ petition.

(2) The brief facts are :-

While the petitioner was alive he was working as an officer in the Durg Branch of the respondent – Bank. He was served with a charge-memo dated

256

24.12.1986. In the charge-memo, it was alleged that by his acts of omissions and commissions, said to have been done by him during the period 25.11.1983 to 1.10.1984, he has committed acts of misconduct unworthy of an officer of the Bank and thereby has exhibited lack of integrity and devotion to duty as an officer of the Bank. Along with the charge-memo, he was served with a statement of imputations, list of witnesses and the documents in support of the charge-memo. Though the charge memo was served on the delinquent officer, he did not choose to file any reply to the assertions and allegations made in the charge-memo.

(3) The disciplinary authority of the Bank, in order to hold an enquiry against the delinquent officer in respect of the allegations made in the charge-memo, had appointed one Shri S.B.Chakraborty and later on he was replaced by one Shri S.R.Chakraborty as enquiry officer. Shri S.G.Vaidya was appointed as a presenting officer to present the case on behalf of the disciplinary authority in support of the allegations made in the charge-memo.

(4) Before the enquiry officer, the disciplinary authority had examined five witnesses (M.W.-1 to M.W.-5) and had marked nearly one hundred and five documents in support of the allegations made in the charge-memo.

(5) The delinquent officer had examined himself, but did not choose to examine any witnesses.

(6) After holding an enquiry in accordance with the procedure prescribed under the Allahabad Bank Officer Employees' (Conduct) and (Discipline & Appeal) Regulations, 1976 (henceforth 'the Regulations, 1976') and following the principle of "*audi alterem partem*", the enquiry officer has come to the conclusion that the delinquent officer is guilty of the charges alleged in the charge-memo.

(7) After receipt of the report of the enquiry officer along with the evidence and the documents on record, the disciplinary authority, after considering the

257

evidence on record, both oral and documentary, and report of the enquiry officer, has accepted the same and in view of the gravity of the misconduct, said to have been proved against the delinquent officer, has imposed a punishment of dismissal from service by his order dated 13.10.1987.

(8) Aggrieved by the aforesaid order passed by the disciplinary authority, the delinquent officer had filed an appeal before the first appellate authority as provided under the Regulations, 1976. The first appellate authority, after considering the various grounds urged by the appellant/petitioner before him, has proceeded to reject the appeal and has confirmed the order passed by the disciplinary authority, by his order dated 26-8-1988. The same is communicated to the delinquent officer on 14-09-1988.

(9) Aggrieved by the aforesaid two orders, the petitioner is before this Court in the present writ petition.

(10) Shri B.P.Sharma, learned counsel appearing for the petitioner, has raised three contentions before me. They are, that proper opportunity of hearing was not given to the delinquent officer by the enquiry officer, the disciplinary authority and the appellate authority. Elaborating on this issue, the learned counsel would submit that the enquiry officer had not faithfully followed the procedure prescribed under the Regulations, 1976 while holding the enquiry. The second issue raised by the learned counsel is that the order passed by the first appellate authority is a laconic order, in the sense that it is not a speaking order and, therefore, the order passed by the first appellate authority requires to be set aside. Lastly, the learned counsel would submit that the respondent – Bank had filed a civil suit against the account holders of the Bank, who, according to the disciplinary authority of the Bank, had issued self cheques to the petitioner to withdraw the money and for the same cause of action, the Bank had filed a civil suit and the civil suit has been decreed in favour of the Bank and, therefore, the Bank cannot contend in one breath that the delinquent officer has mis-utilized the funds of the Bank and at the same

258

time could not have filed a civil suit against the account holders for recovery of the amounts which were credited in their accounts by mistake. In view of all these, learned counsel appearing for the petitioner would submit that the orders passed by the first appellate authority and the disciplinary authority require to be set aside by this Court and a direction requires to be issued to the Bank to award monetary benefits to the legal representatives of the delinquent officer, who expired during the pendency of this writ petition.

(11) In support of the aforesaid contentions, learned counsel for the petitioner relies upon the several decisions of the Apex Court. They are ***Narinder Mohan Arya* vs. *United India Insurance Co. Ltd. and others*, reported in (2006) 4 SCC 713, *State of U.P.* vs. *Shatrughan Lal and another*, reported in (1998) 6 SCC 651, *B.C.Chaturvedi* vs. *Union of India and others*, reported in (1995) 6 SCC 749, *State Bank of India and others* vs. *D.C.Aggarwal and another*, reported in (1993) 1 SCC 13, *Union of India and another* vs. *K.G.Soni*, reported in (2006) 6 SCC 794** and ***Jasbir Singh* vs. *Punjab & Sind Bank and others*, reported in (2007) 1 SCC 566**.

(12) *Per contra,* Shri P.S.Koshy, learned counsel appearing for the respondent – Bank, would submit that merely because the Bank had filed a civil suit against some of the account holders of the Bank would not absolve the petitioner from the allegations made in the charge-memo. The learned counsel would submit that the omissions and commissions committed by the delinquent officer while working in the Durg Branch of the respondent – Bank would constitute an act of misconduct, which is in violation of Rule 3(1) of the Regulations, 1976. The learned counsel would further submit that the enquiry officer, after a detailed enquiry, has come to the conclusion that the delinquent officer is guilty of the charges alleged in the charge-memo and which view of the enquiry officer is accepted by the disciplinary authority after careful analysis of the report of the enquiry officer, evidence on record both oral and documentary and, therefore, this Court, in exercise of its power of judicial

259

review should not unsettle the findings of fact recorded by the enquiry officer and the orders passed by the disciplinary and the appellate authorities.

(13) To explain the concept of judicial review in the matter of disciplinary proceedings, the learned counsel for the respondent relies upon the observations made by the Apex Court in the matter of ***Union of India and another*** **vs.** ***B.C.Chaturvedi***, **reported in (1995) 6 SCC 749** and also relies upon the subsequent decision rendered by the Apex Court.

(14) Learned counsel for the respondent – Bank would further submit that merely because the respondent – Bank had filed some civil suit for recovery of amounts from the account holders in whose accounts the delinquent officer had credited the demand drafts issued by two other account holders, would not absolve the petitioner from the allegations made in the charge-memo. For all these reasons, learned counsel for the respondent – Bank would submit that the interference with the orders passed by the disciplinary authority is not called for.

(15) In order to appreciate the contentions canvassed by learned counsel appearing for the parties to the *lis*, the charge-memo and the statement of imputations issued and served by the disciplinary authority of the Bank on the delinquent officer requires to be noticed. Therefore, they are extracted and they are as under :-

> "ZO/VIG-36/008717 24.12.1986
>
> CHARGE-SHEET
>
> The undersigned proposes to hold an inquiry against Shri Chandra Shekhar Pandey (under suspension) Ex-Officer, Durg branch, under Regulation 6 of the Allahabad Bank Officer Employees' (Discipline & Appeal) Regulations, 1976. The substance of the imputations of the misconduct in respect of which the inquiry is proposed to be held, is set out in the enclosed statement of articles of charge (Annexure-I). A

(260)

statement of imputations of misconduct in support of each article of charges is enclosed (Annexure-II). A list of documents by which and a list of witnesses by whom the articles of charge are proposed to be sustained are also enclosed respectively. (Annexures III & IV).

2. The said Shri Chandra Shekhar Pandey is directed to submit within 10 days from the date of receipt of this charge sheet a written statement of his defence and also to state whether he desires to be heard in person.

3. The said Shri Chandra Shekhar Pandey is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above or does not appear in person before the inquiring authority or otherwise fails or refused to comply with provisions of Allahabad Bank Officer Employees' (Discipline & Appeal) Regulat5ions, 1976 or the orders/directions issued in pursuance of the said regulations, the inquiring authority may hold the inquiry against him ex-parte.

4. The attention of the said Shri Chandra Shekhar Pandey is invited to Regulation 12 of the Allahabad Bank Officer Employees' (Conduct) Regulations, 1976 under which no employee of the Bank shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service in the Bank. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that the said Shri Chandra Shekhar Pandey is aware of such representation and that it has been made at his instance and action will be taken against him for violation of the Regulation 12 of the Allahabad Bank Officer Employees' (Conduct) Rules, 1976.

5. The said Shri Chandra Shekhar Pandey has our permission to visit Durg branch, if he so desires, for the

261

purpose of verification of relevant records/documents with a view to enable him to submit his reply to this letter within the time limit permitted/allowed for the purpose. He is further informed that no duty leave, travelling expenses/T.A. or D.A. etc. would be payable to him.

6. The receipt of the memorandum may be acknowledged.

Sd/-
(B.P.Saxena)
Assistant General Manager &
Disciplinary Authority

To,

Shri Chandra Shekhar Pandey,
Ex-Officer, Durg Branch,
(under suspension)
C/o Allahabad Bank,
Regional Office,
Bhopal."

"Statement of Articles of Charge framed against Shri Chandra Shekhar Pandey, Ex-Officer, Allahabad Bank, Durg branch.

That the said Shri Chandra Shekhar Pandey while functioning as an officer of Allahabad Bank, Durg branch (M.P.) during the period from 25.11.1983 to 1.10.1984 committed gross misconduct in as much as he failed to maintain absolute integrity and devotion to duty as he, while functioning as such received 8 (eight) Bank drafts of M/s M. Farel Hussain M. Habib Bhai and M/s Mohanlal Bhagwati Prasad amounting to Rs.1,00,300/- for crediting the proceeds of drafts in the respective accounts, whereas, in fact, he managed to credit the amount of Bank drafts in the account of other persons and subsequently managed to obtain cheques from the concerned persons and obtained payment of Rs.1,00,100/-.

Shri Chandra Shekhar Pandey by his above acts exhibited lack of integrity and conduct unbecoming of an officer of the Bank thereby violated Rule 3(1) of

262

Allahabad Bank Officer Employees' (Conduct) Regulations, 1976.

Sd/-
(B.P.Saxena)
Assistant General Manager &
Disciplinary Authority"

"State of imputation of misconduct/misbehaviour in support of the articles of charge framed against Shri Chandra Shekhar Pandey, Officer, Allahabad Bank, Durg Branch (M.P.)

Shri Chandra Shekhar Pandey was functioning as an officer of Allahabad Bank, Durg branch during the period from 25.11.1983 to 1.10.1984. Shri Pandey, as an officer of the Bank received 8 (eight) demand drafts of M/s Farel Hussain M. Habib Bhai and M/s Mohanlal Bhagwati Prasad for a total amount of Rs.1,00,300/- for crediting the proceeds thereof in their respective accounts with the branch. However, Shri C.S.Pandey managed to credit the amounts of the said drafts in the accounts of other account holders in the books of account of the branch. The details of drafts and names of the account holders in whose accounts the amount of drafts was wrongly credited or given in Appendix 'A' hereof.

Shri C.S.Pandey on different dates managed to obtain various cheques as mentioned in Appendix 'A' from the aforesaid account holders and obtained the payment from the branch thereagainst.

Shri C.S.Pandey by his above acts exhibited lack of integrity and devotion to duty as an officer of the Bank violating Rule 3(1) of Allahabad Bank Officer Employees' (Conduct) Regulations, 1976."

Sd/-
(B.P.Saxena)
Assistant General Manager &
Disciplinary Authority"

263

"DETAILS OF BANK DRAFTS AND THE NAME OF THE ACCOUNT HOLDERS IN WHOSE ACCOUNT THE AMOUNT OF DRAFTS WAS CREDITED

Sl. No.	Particulars of draft	Amount	Name of the Payee	Name of the account holder in whose account the amount of drafts was actually credited	Amount and date of withdrawals
1.	No.402739 dt. 22.11.83	Rs.10,000/-	M.Farel Hussain M. Habib Bhai	Santosh Kumar Verma	Rs.5,000/- of 26.11.83
2.	No.509018 dt. 23.12.80	Rs.10,000/-	Mohanlal Bhagwati Prasad	-do-	Rs.5,000/- of 5.12.83 Rs.5,000/- of 7.1.84
3.	No.144294 dt. 29.12.83	Rs.3,600/-	-do-	-do-	Rs.2,500/- of 5.1.84
4.	No.144363 dt. 8.2.84	Rs.6,100/-	-do-	Lekhraj Meghani	Rs.3,000/- of 16.2.84 Rs.8,000/- of 28.2.84
5.	No.509218 dt.24.12.84	Rs.10,000/-	-do-	Satish Construction	Rs.5,000/- of 30.3.84 Rs.6,600/- of 22.10.84
6.	No.331325 dt. 22.8.84	Rs.31,601.40	-do-	-do-	Rs.10,000/- of 26.10.84 Rs.5,000/- of 7.4.84 Rs.5,000/- of 5.10.84 Rs.10,000/- of 5.10.84
7.	No.509349 dt.24.3.84	Rs.15,000/-	-do-	Amrit Pratap Das	Rs.5,000/- of 14.3.84 Rs.5,000/- of 15.3.84 Rs.5,000/- of 7.5.84
8.	No.0032029 dt. 30.4.84	Rs.14,000/-	-do-	-do-	Rs.5,000/- of 24.4.84 Rs.10,000/- of 7.5.84"

(16) In the charge-memo, the disciplinary authority of the respondent – Bank has stated that when the petitioner was discharging his duties as an officer of the Bank during the period from 25.11.1983 to 1.10.1984 had committed a gross misconduct and had failed to maintain his absolute integrity and devotion to the duty. The reason being, he had received eight Bank Drafts of M/s M. Farel Hussain M. Habib Bhai and M/s Mohanlal Bhagwati Prasad amounting to Rs.1,00,300/- for crediting the proceeds of the drafts in their respective accounts. The disciplinary authority has further stated that the delinquent officer had managed to credit the amount of the Bank Drafts in the accounts of the other four persons, namely, Santosh Kumar Verma, Lekhraj Meghani, M/s Satish Construction and Amrit Pratap Das and thereafter managed to obtain self cheques from those account holders "and obtained payment of Rs.1,00,100/-" [Emphasis supplied by me] and the aforesaid action of the delinquent officer would exhibit the lack of integrity and conduct unbecoming of an officer of the Bank and thereby violated Rule 3(1) of the

(264)

Regulations, 1976. An analysis of the charge-memo and the statement of imputations, would clearly demonstrate, that the delinquent officer, while he was functioning as an officer in the Durg Branch of the respondent – Bank, had received eight Bank Drafts from two account holders for crediting the proceeds of the drafts in their accounts, but had managed it to credit the proceeds of those Bank Drafts in the name of four other different account holders and thereafter by utilizing the self cheques of those four account holders, obtained payment of Rs.1,00,100/-. At this stage, it is useful to refer to the civil suit filed by the Bank just within a span of six months from the date of issuance of the charge-memo.

(17) In the plaint filed, the Bank has stated in the case of Shri Santosh Kumar Verma, that, he had purchased a fixed deposit of Rs.14,000/- on 22.08.1993 and had availed an advance against it and on different dates by issuing cheques had withdrawn the amounts, knowing fully well that by mistake, wrong credit entries were made in his name and, therefore, the Bank had requested the Court for a judgment and decree for refund of the amounts drawn by him on different dates with interest thereof. The same is the case in the case of Lekhraj Meghani, M/s Satish Construction and Shri Amrit Pratap Das.

(18) At the time of hearing this writ petition, I was told by Shri B.P.Sharma, learned counsel for the petitioner, that except one case, in all other cases the Bank has obtained judgment and decree in its favour against the defendants, in the suit.

(19) The enquiry officer in his report dated 15-09-1987, after holding a detailed enquiry, has concluded as under :-

> "Thus considering the above facts and circumstances, the evidences adduced before the enquiry and the manner by which Shri C.S.Pandey managed to credit wrong entries in, 4 different accounts of Durg Branch,

265

thereafter, managed to obtain self-drawn cheques from them. With the plea of adjusting the wrong credits, clearly exhibits Shri Pandey's direct involvement in this forgery in Durg Branch. In this connection, I enclose a letter with other relative papers received from Shri Santosh Kumar Verma, one of the 4 account holders in whose account the wrong credits have been made, may kindly be taken into consideration while assessing the seriousness of the offence of Shri C.S.Pandey.

I hold that the charge against Shri Chandra Shekhar Pandey has been conclusively proved.

The above acts of Shri Pandey has clearly exhibited lack of integrity and conduct unbecoming of a Bank Officer, thereby violated Rule 3(1) of Allahabad Bank Officer–Employees' (Conduct) Regulations, 1976."

(20) The disciplinary authority of the respondent – Bank, while issuing the charge-memo, had not even thought of the 'forgery' said to have been committed by the delinquent officer.

(21) The question, that would arise for my consideration and decision, is whether the disciplinary authority, having issued the charge-memo and thereafter having filed the civil suit for recovery of the amounts from the four account holders of the Bank on the ground that they have withdrawn certain amounts, which were credited into their accounts by mistake, would constitute an act of misconduct and whether the disciplinary authority was justified in imposing a major penalty of dismissal from service?

(22) In the charge-memo, as I have already noticed that the petitioner, while discharging his functions as an officer of the Durg Branch of the respondent – Bank, had received eight drafts from M/s M. Farel Hussain M. Habib Bhai and M/s Mohanlal Bhagwati Prasad amounting to Rs.1,00,300/- for crediting the proceeds of the drafts in their respective accounts, but he managed to deposit the proceeds of those drafts in the name of the four other

266

account holders of the Bank and thereafter by obtaining self cheques had obtained a payment of Rs.1,00,100/-.

(23) In the civil suit filed by the Bank, it has categorically stated that certain wrong entries were made by the Bank in the name of those four account holders and taking advantage of those wrong entries, the defendants in the civil suit, namely, Santosh Kumar Verma, Lekhraj Meghani, M/s Satish Construction and Amrit Pratap Das had withdrawn the money. That only means that it is not the delinquent officer who had withdrawn the money which was deposited in the name of four account holders. Filing of the civil suit by the respondent – Bank for a judgment and decree against those four account holders would clearly show that it is not the delinquent officer who had taken advantage of the wrong entries made in the accounts of those four account holders. Apart from this fact, the Bank has obtained decrees against the four account holders and this aspect of the matter should have taken note of by the disciplinary authority or at least by the appellate authority before imposing any punishment on the delinquent officer. In a more or less similar situation in the case of ***Jasbir Singh* vs. *Punjab & Sind Bank and others*, (2007) 1 SCC 566**, the Apex Court observed as under :

> "In the present case, the respondent Bank invited findings of a competent civil court on the issue as to whether the appellant had committed any embezzlement or not. Embezzlement of fund was the principal charge against the appellant in all the proceedings. The respondent Bank failed to prove any of the charges before any court of law. The judgment in civil matter having attained finality, was binding on the respondent Bank."

In the said case, the Court further observed as under :

> "In a case of this nature, the High Court should have applied its mind to the facts of the matter with reference to the materials brought on records. It failed

267

to do so and did not take note of the decision of the civil court. It could not have refused to look into the materials on record. Therefore, the impugned judgment cannot be sustained."

(24) This aforesaid aspect of the matter ought to have been considered by the first appellate authority before mechanically proceeding to confirm the order passed by the disciplinary authority.

(25) In view of the above, in my opinion, the relief sought for by the petitioner requires to be granted. Accordingly, the following

ORDER

(i) The writ petition is allowed in part. The impugned orders passed by the disciplinary authority and confirmed by the appellate authority are quashed.

(ii) Since the petitioner has expired during the pendency of this writ petition, question of his reinstatement in the service would not arise.

(iii) The legal representatives of the deceased petitioner, i.e., the delinquent officer are entitled for the arrears of the salary and other monetary benefits from the date the delinquent officer was dismissed from the service till the date of payment.

(iv) In view of the above, the other two issues raised by learned counsel for the petitioner need not be considered by me. Ordered accordingly.

Sd/-
Chief Justice